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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-580-868]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Large Residential Washers from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value

SUMMARY: We preliminarily determine that large residential washers (washers) from the Republic of Korea (Korea) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act).

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the Federal Register.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Henry Almond, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-0049, respectively.

### Preliminary Determination

We preliminarily determine that washers from Korea are being sold, or are likely to be sold, in the United States at LTFV, as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the “Suspension of Liquidation” section of this notice.

### Background

Since the initiation of this investigation on January 19, 2012, the following events have occurred.<sup>1</sup>

On February 21, 2012, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of washers from Korea are materially injuring the United States industry.<sup>2</sup> On March 7, 2012, we issued section A of the questionnaire (i.e., the section covering general information), as well as sections B through E of the questionnaire (i.e., the sections covering comparison market sales, U.S. sales, cost of production (COP) information, and further manufacturing information, respectively) to Daewoo Electronics Corporation (Daewoo), LG Electronics, Inc. (LG), and Samsung Electronics Co., Ltd. (Samsung).

We received responses to section A of the questionnaire from LG and Samsung in April 2012, and to sections B, C, and D of the questionnaire in May 2012. No responses to section E of the questionnaire were necessary. Daewoo did not respond to the questionnaire. See “Application of Facts Available” section, below.

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<sup>1</sup> See Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations, 77 FR 4007 (January 26, 2012) (Initiation Notice).

<sup>2</sup> See ITC Investigation Nos. 701-TA-488 and 731-TA-1199-1200 (Publication No. 4306).

On May 10, 2012, Whirlpool Corporation (hereafter, the petitioner) requested that the date for the issuance of the preliminary determination in this investigation be fully extended pursuant to section 733(c)(1) of the Act and 19 CFR 351.205(e). On May 16, 2012, pursuant to sections 733(c)(1)(A) and (c)(2) of the Act and 19 CFR 351.205(f), the Department postponed the preliminary determination until no later than July 27, 2012.<sup>3</sup>

On May 17, 2012, the petitioner submitted a request for the Department to amend the scope of this and the concurrent antidumping and countervailing duty investigations of washers from Mexico and Korea, respectively, and to exclude certain products from those investigations. Samsung and LG objected to the petitioner's scope exclusion request on May 23 and May 24, 2012, respectively. On July 11, 2012, General Electric Company and its operating division GE Appliances & Lighting (GE), a domestic producer and importer of washers, declared its support for the petitioner's scope exclusion request. On July 18, 2012, Staber Industries, Inc. (Staber), a domestic producer of washers, also filed a letter in support of the petitioner's scope exclusion request. See "Scope Comments" section of this notice.

We issued supplemental questionnaires and received responses to these supplemental questionnaires from May through July 2012.<sup>4</sup>

On June 11, 2012, the petitioner alleged that targeted dumping was occurring with respect to washers produced and exported from Korea by LG and Samsung. On July 5, 2012, the petitioner revised its targeted dumping allegation for LG.

On July 13, 2012, Samsung and LG requested a postponement of the final determination.

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<sup>3</sup> See Large Residential Washers From the Republic of Korea and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 77 FR 30261 (May 22, 2012).

<sup>4</sup> We did not consider any data submissions received after July 17, 2012, for purposes of the preliminary determination.

On July 25, 2012, the petitioner alleged that Samsung has engaged in fraudulent conduct that undermines the integrity of this investigation. While this allegation was not received in time to be considered for the preliminary determination, it will be examined thoroughly and addressed as appropriate over the course of this proceeding.

#### Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on July 13, 2012, Samsung and LG requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the Federal Register, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative for LG and Samsung, (2) LG and Samsung account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting LG's and Samsung's requests and are postponing the final determination until no later than 135 days after the publication of this notice in the Federal Register. Suspension of liquidation will be extended accordingly.

### Period of Investigation

The period of investigation (POI) is October 1, 2010, through September 30, 2011. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., December 2011).

### Scope of Investigation

The product covered by this investigation is all large residential washers and certain subassemblies thereof from Korea.

For purposes of this investigation, the term “large residential washers” denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs<sup>5</sup> designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets<sup>6</sup> designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;<sup>7</sup> (b) a base; and (c) a drive hub;<sup>8</sup> and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term “stacked washer-dryers” denotes distinct washing and drying machines that are built on a

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<sup>5</sup> A “tub” is the part of the washer designed to hold water.

<sup>6</sup> A “basket” (sometimes referred to as a “drum”) is the part of the washer designed to hold clothing or other fabrics.

<sup>7</sup> A “side wrapper” is the cylindrical part of the basket that actually holds the clothing or other fabrics.

<sup>8</sup> A “drive hub” is the hub at the center of the base that bears the load from the motor.

unitary frame and share a common console that controls both the washer and the dryer. The term “commercial washer” denotes an automatic clothes washing machine designed for the “pay per use” market meeting either of the following two definitions:

- (1) (a) it contains payment system electronics;<sup>9</sup> (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;<sup>10</sup> or
- (2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,<sup>11</sup> the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is

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<sup>9</sup> “Payment system electronics” denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

<sup>10</sup> A “security fastener” is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a “center pin reject” feature to prevent standard Allen wrenches or Torx drivers from working.

<sup>11</sup> “Normal operation” refers to the operating mode(s) available to end users (*i.e.*, not a mode designed for testing or repair by a technician).

assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.7 cubic feet, as certified to the U.S.

Department of Energy pursuant to 10 CFR § 429.12 and 10 CFR § 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this investigation are currently classifiable under subheading 450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

#### Scope Comments

In accordance with the preamble to the Department's regulations,<sup>12</sup> in our Initiation Notice we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice. No interested party submitted comments during that period. However, on May 17, 2012, the petitioner indicated that it wanted to amend the scope of the investigations, and requested that the Department exclude automatic washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet from the scope of this and the concurrent antidumping and countervailing duty investigations of washers from Mexico and Korea, respectively. Subsequently, we received comments from Samsung and LG objecting to the petitioner's scope exclusion request, and comments from GE and Staber supporting the

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<sup>12</sup> See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

request. We also contacted U.S. Customs and Border Protection (CBP) seeking its input on whether the petitioner’s proposed scope exclusion request, if granted by the Department, would be enforceable by CBP. Based on the comments received from the interested parties and information provided by CBP, we are amending preliminarily the scope of the investigations to exclude top-load washers with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet. It is within the Department’s authority to define the scope of an investigation. See section 732(b)(1) of the Act. Further, it is the Department’s practice to provide ample deference to the petitioner with respect to the merchandise from which it intends to seek relief. See memorandum entitled “Preliminary Exclusion of Top-Load Washing Machines with a Rated Capacity Less than 3.70 Cubic Feet from the Scope of the Investigations,” dated concurrently with this notice, for further discussion.

#### Application of Facts Available

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, apply “the facts otherwise available” if (1) necessary information is not available on the record of an antidumping proceeding or (2) an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party with an



opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority” if the information is submitted in a timely manner, can be verified, is not so incomplete that it cannot be used, and the interested party acted to the best of its ability in providing the information.

In this case, Daewoo did not respond to the Department’s questionnaire by the established deadline nor did it request an extension of time to submit its response. Thus, the Department preliminarily determines that necessary information is not available on the record to serve as the basis for the calculation of a margin for Daewoo. See section 776(a)(1) of the Act. We also preliminarily find that Daewoo withheld information requested by the Department and significantly impeded the proceeding. See section 776(a)(2)(A) and (C) of the Act.<sup>13</sup>

Therefore, pursuant to sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act, the Department preliminarily determines that the use of the facts otherwise available is warranted for Daewoo. Because Daewoo failed to provide any information in this investigation, sections 782(d) and (e) of the Act are not applicable in this case.

#### Application of Adverse Facts Available and Selection of Adverse Facts Available Rate

Section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party

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<sup>13</sup>See also e.g., Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review, 74 FR 17149 (April 14, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

in selecting from the facts otherwise available.<sup>14</sup> Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994) (SAA) at 870. Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.”<sup>15</sup> In this case, the Department has determined that Daewoo failed to cooperate to the best of its ability in this proceeding by refusing to participate in the Department’s investigation. Therefore, the Department has preliminarily determined an adverse inference is warranted in selecting from the facts otherwise available pursuant to section 776(b) of the Act.<sup>16</sup>

#### Corroboration of Secondary Information Used as Adverse Facts Available

Where the Department applies adverse facts available (AFA) because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and the SAA at 868-870. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it

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<sup>14</sup> See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile, 72 FR 70295, 70297 (December 11, 2007).

<sup>15</sup> See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997); see also Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

<sup>16</sup> See, e.g., Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 18369 (April 11, 2005), unchanged in Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review, 70 FR 37759 (June 30, 2005) (KSC/JFE’s counsel contacted the Department to state that KSC/JFE would not be submitting a response to the Department’s antidumping questionnaire).

had fully cooperated. Normally, it is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information.<sup>17</sup> The rates in the petition, as adjusted at initiation, range from 31.03 percent to 82.41 percent. See Initiation Notice at 4010.

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.<sup>18</sup> The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published prices lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination. See Antidumping

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<sup>17</sup> See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland, 69 FR 77216 (December 27, 2004) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland, 70 FR 28279 (May 17, 2005)).

<sup>18</sup> See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and partial Termination of Administrative Reviews, 62 FR 57391, 57392 (November 6, 1996) (unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997)).

Investigation Initiation Checklist dated January 19, 2012 (Initiation Checklist), at 6 through 11. See also Initiation Notice at 4009-4011. We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the U.S. price and normal value (NV) calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in supplements to the petition that corroborates key elements of the U.S. price and NV calculations used in the petition to derive estimated margins. See Id.

We have selected the petition rate of 82.41 percent (as adjusted at initiation) as the appropriate AFA rate to apply in this case. This rate achieves the purpose of applying an adverse inference, i.e., it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>19</sup>

Based on our examination of the information, as discussed in detail in the Initiation Checklist and the Initiation Notice, we consider the petitioner's calculation of the U.S. price and NV underlying the 82.41 percent rate to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the 82.41 percent margin is reliable for purposes of this investigation.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have

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<sup>19</sup> See KYD, Inc. v. United States, 607 F.3d 760, 767 (Fed. Cir. 2010).

relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.<sup>20</sup> Similarly, the Department does not apply a margin that has been discredited or judicially invalidated.<sup>21</sup>

The 82.41 percent rate reflects commercial practices of the washer industry and, as such, is relevant to Daewoo. The courts have acknowledged that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.<sup>22</sup> Such consideration typically encompasses the commercial behavior of other respondents under investigation and the selected AFA rate is gauged against the margins we calculate for those respondents. Therefore, we compared the model-specific margins we calculated for LG and Samsung for the POI to the adjusted petition rate of 82.41 percent. We found model-specific margins calculated for LG and Samsung in this investigation in the range of and above the 82.41 percent petition margin. See memorandum entitled “Corroboration of Secondary Information Used as Adverse Facts Available,” dated concurrently with this notice. Accordingly, the AFA rate is relevant as applied to Daewoo for this investigation because it falls within the range of model-specific margins we calculated for LG and Samsung in this investigation. A similar corroboration methodology has been upheld by the Court of Appeals for the Federal Circuit.<sup>23</sup> Further, this methodology is consistent with our past practice.<sup>24</sup>

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<sup>20</sup> See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996), where the Department disregarded the highest margin in that case as best information available (the predecessor to facts available), because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin.

<sup>21</sup> See D & L Supply Co. v. United States, 113 F.3d 1220, 1221 (Fed. Cir. 1997).

<sup>22</sup> See, e.g., Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334 (1999).

<sup>23</sup> See PAM, S.p.A. v. United States, 582 F.3d 1336, 1340 (Fed. Cir. 2009).

<sup>24</sup> See Narrow Woven Ribbons With Woven Selvedge From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808, 41811 (July 19, 2010).

Accordingly, we have determined that the AFA rate of 82.41 percent is corroborated “to the extent practicable” as provided in section 776(c) of the Act. See also 19 CFR 351.308(d). Therefore, with respect to Daewoo, we have used, as AFA, the adjusted petition margin of 82.41 percent.

#### Targeted Dumping Allegations

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: (1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. See section 777A(d)(1)(B) of the Act.

On June 11, 2012, the petitioner submitted allegations of targeted dumping with respect to LG and Samsung and asserted that the Department should apply the average-to-transaction methodology in calculating the margins for these respondents. In its allegations, the petitioner asserted that there are patterns of U.S. sales prices for comparable merchandise that differ significantly among time periods, customers, and regions.<sup>25</sup> See the Petitioner’s Allegations of Targeted Dumping submission dated June 11, 2012, at pages 3-6. On July 5, 2012, the petitioner revised its targeted dumping allegation for LG with respect to time period.

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<sup>25</sup> The petitioner relied on the Department’s targeted dumping test in Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008), and Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) (collectively Nails), as applied in more recent investigations such as Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea, 77 FR 17413 (March 26, 2012) (Refrigerators).

#### A. Targeted Dumping Test

We conducted time-period, customer, and regional targeted dumping analyses for LG and Samsung using the methodology we adopted in Nails and recently articulated in Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) (Wood Flooring), and accompanying Issues and Decision Memorandum at Comment 4, and Refrigerators.

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. See section 777A(d)(1)(B)(i) of the Act, Nails, Wood Flooring, and Refrigerators. In this test we made all price comparisons on the basis of identical merchandise (i.e., by control number or CONNUM).

#### LG

We based all of our targeted dumping calculations on the U.S. net price which we determined for U.S. sales by LG in our standard margin calculations. For further discussion of the test and results, see memorandum entitled “Preliminary Determination Margin Calculation for LG Electronics Inc. and LG Electronics USA, Inc. (collectively, “LG”) (LG Calculation Memo), dated concurrently with this notice. As a result of our analysis, we preliminarily determine that there is a pattern of U.S. prices for comparable merchandise that differs significantly among certain time periods, customers, and regions for LG, in accordance with section 777A(d)(1)(B)(i) of the Act and our current practice as discussed in Nails, Wood Flooring, and Refrigerators.

Samsung

We based all of our targeted dumping calculations on the U.S. net price which we determined for Samsung’s U.S. sales in our standard margin calculations. For further discussion of the test and results, see memorandum entitled “Preliminary Determination Margin Calculation for Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) (Samsung Calculation Memo), dated concurrently with this notice. As a result of our analysis, we preliminarily determine that there is a pattern of U.S. prices for comparable merchandise that differs significantly among certain time periods, customers, and regions for Samsung, in accordance with section 777A(d)(1)(B)(i) of the Act and our current practice as discussed in Nails, Wood Flooring, and Refrigerators.

B. Price Comparison Method

Section 777A(d)(1)(B)(ii) of the Act states that the Department may compare the weighted average of the NV to export prices (EPs) (or constructed export prices (CEPs)) of individual transactions for comparable merchandise if the Department explains why differences in the patterns of EPs (or CEPs) cannot be taken into account using the average-to-average methodology. As described above, we preliminarily determine that, with respect to sales by LG and Samsung, for certain time periods, customers, and regions there was a pattern of prices that differed significantly.

For both LG and Samsung, we find that these differences cannot be taken into account using the average-to-average methodology because the average-to-average methodology conceals differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. Therefore, for the preliminary determination, we find that the standard average-to-



average methodology does not take into account LG’s and Samsung’s price differences because the alternative average-to-transaction methodology yields a material difference in the margin. Accordingly, for this preliminary determination we applied the average-to-transaction methodology to all U.S. sales made by LG and Samsung. In applying this methodology, consistent with our practice, we did not offset negative comparison results with positive comparison results. See Refrigerators and accompanying Issues and Decision Memorandum at Comment 2. See also the LG Calculation Memo and the Samsung Calculation Memo for further discussion.

#### Fair Value Comparisons

To determine whether sales of washers from Korea to the United States were made at LTFV, we compared the EP or CEP to the NV, as described in the “Export Price/Constructed Export Price” and “Normal Value” sections of this notice, below. In accordance with section 777A(d)(1)(B) of the Act, we compared transaction-specific EPs and CEPs to weighted-average NVs for LG and Samsung. See “Targeted Dumping Allegations” section, above.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Korea during the POI that fit the description in the “Scope of Investigation” section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: finished unit or subassembly; load, agitator and axis type; capacity measurement; drying system; finish; user interface display; specialty cycle; door/lid material; motor type; water heater; and shoecare function.

We excluded from our analysis U.S. and comparison market sales of top-load washers with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet. See “Scope of Investigation” and “Scope Comments” sections, above.

#### Export Price/Constructed Export Price

For certain U.S. sales made by LG, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the subject merchandise outside the United States, and the use of the CEP methodology was not otherwise warranted based on the facts of record.

For the remaining U.S. sales made by LG and all of Samsung’s U.S. sales, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold (or agreed to be sold) in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

#### A. LG

With respect to EP sales, we based the starting price on the packed prices to unaffiliated purchasers in the United States. For those sales where the shipment date preceded the invoice

date, we used the shipment date as the date of sale, in accordance with our practice.<sup>26</sup> We increased the starting price by the amount of billing adjustments. We also increased the starting price by the amount of duty drawback reported by LG, in accordance with section 772(c)(1)(B) of the Act. We made deductions for discounts and rebates, as appropriate. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, and marine insurance. Regarding foreign inland freight, LG used an affiliated company to arrange delivery of its merchandise to the port of exportation. Because LG's affiliate did not provide the same service to unaffiliated parties, nor did LG use unaffiliated companies for its deliveries, we were unable to test the arm's-length nature of the expenses paid by LG. Therefore, we based these expenses on the affiliate's costs. For further discussion, see the LG Calculation Memo.

We based CEP on the packed prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of billing adjustments, where appropriate, and duty drawback reported by LG. We made deductions for discounts and rebates, as appropriate.

We made deductions for movement expenses for LG's CEP transactions, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight (adjusted as noted above), foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. warehousing, and U.S. inland freight.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States,

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<sup>26</sup>See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 71 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11.

including direct selling expenses (i.e., imputed credit expenses, bank charges, flooring fees, advertising expenses, and warranty expenses), offset by restocking fees collected by LG, where applicable, and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by LG and its affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

B. Samsung

We based CEP on the packed prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of billing adjustments reported by Samsung. We made deductions for discounts and rebates, as appropriate. We did not make an adjustment for duty drawback, as claimed by Samsung, because Samsung did not include the duties drawn-back upon export in its reported COP.<sup>27</sup>

We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign loading, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including processing fees and harbor maintenance fees), U.S. warehousing, U.S. inland insurance, and U.S. inland freight. With respect to foreign brokerage and handling, foreign inland freight, foreign loading, and international freight expenses,

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<sup>27</sup> For purpose of the preliminary determination, we used the COP information that Samsung reported in its July 3, 2012, supplemental section D questionnaire response. While Samsung submitted an additional cost response on July 20, 2012, which responds to the Department's request to include the duties drawn back upon export in its reported costs, this response was received too late to be considered for the preliminary determination. We will verify Samsung's claimed duty drawback and product-specific duty costs and consider this information for use in the final determination.

Samsung used an affiliated company to provide these services. Because Samsung’s affiliate did not provide the same services to unaffiliated parties, nor did Samsung use unaffiliated companies for these services, we were unable to test the arm’s-length nature of the expenses paid by Samsung. Therefore, we based these expenses on the affiliate’s costs. For further discussion, see the Samsung Calculation Memo.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., imputed credit expenses, advertising expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Samsung and its affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Furthermore, we included in our calculation of CEP certain U.S. sales affected by an allegedly unforeseen event that affected several transactions, including certain sales that Samsung contends were sold before the POI. We preliminarily determine that these sales were made during the POI and, therefore, we have included them in our preliminary margin analysis. See the Samsung Calculation Memo for further discussion.

Samsung argues that expenses associated with this event should not be included in our margin calculation consistent with the Department’s practice with respect to the treatment of “extraordinary” expenses. Alternatively, Samsung maintains that these expenses should be treated as indirect selling expenses. However, we do not find this type of event to be extraordinary because Samsung failed to demonstrate that it is highly abnormal and so unusual

in nature that it could not possibly have been foreseen as part of running a business. Even if this event is, as Samsung argues, completely unexpected in the sale of washers, the petitioner placed information on the record calling into question this claim.<sup>28</sup> While this event was noteworthy to Samsung, it does not rise to the level of the events that the Department has deemed extraordinary in past cases, such as losses caused by a severe hurricane or viral infection that are “unrelated or incidentally related to the ordinary and typical activities of the entity, in light of the entity’s environment.”<sup>29</sup> Accordingly, we included the expenses associated with this event in our calculation of CEP. Furthermore, based on the nature of these expenses, we treated them as warranty expenses. Because the details relating to the event at issue and the expenses associated with this event are business proprietary, see the Samsung Calculation Memo for further discussion.

#### Normal Value

##### A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent’s volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act.

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<sup>28</sup> See the petitioner’s July 2, 2012, submission on this topic.

<sup>29</sup> See Certain Pasta From Italy: Notice of Final Results of the Twelfth Administrative Review, 75 FR 6352 (February 9, 2010), and accompanying Issues and Decision Memorandum at Comment 9. See also Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People’s Republic of China, 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 25; and Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52061 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

In this investigation, we determined that LG's and Samsung's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

B. Affiliated Party Transactions and Arm's-Length Test

During the POI, LG and Samsung sold foreign like product to affiliated customers. We did not conduct the arm's-length test with respect to LG, because LG reported the downstream sales made by its affiliated reseller, rather than the sales it made to its affiliated reseller. We used these downstream sales in our analysis for the preliminary determination.

To test whether Samsung's sales to affiliated customers were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all applicable billing adjustments, discounts and rebates, movement charges, direct selling expenses and packing expenses. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c).<sup>30</sup> Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See section 771(15) of the Act and 19 CFR 351.102(b)(35).

With respect to Samsung's sales to affiliated resellers, we determined that sales to certain affiliated resellers were not made at arm's-length prices and, therefore, excluded these

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<sup>30</sup> See also Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 39615 (August 7, 2009), unchanged in Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review, 75 FR 6631 (February 10, 2010).

sales from our analysis. As this result was a direct consequence of our decision to exclude top-load washers with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet from the scope of investigation (see “Scope of Investigation,” “Scope Comments,” and “Product Comparisons” sections, above), we have not required Samsung to report the related downstream sales.

### C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. Id.<sup>31</sup> In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e., the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (i.e., NV based on either home market or third country prices),<sup>32</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the

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<sup>31</sup> See also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

<sup>32</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.



selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>33</sup>

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>34</sup>

In this investigation, we obtained information from LG and Samsung regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

#### LG

LG reported that it made U.S. sales through three channels of distribution (i.e., direct EP sales to original equipment manufacturer (OEM) customers, CEP sales to OEM customers, and CEP sales out of inventory of LG-branded products). For all three channels of distribution, LG reported that it performed the following selling functions in Korea for sales to U.S. customers: strategic/economic planning, sales forecasting; marketing (advertising,

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<sup>33</sup> See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>34</sup> See, e.g., OJ from Brazil, 75 FR at 51001.

sales/marketing support, market research); packing; order input; direct sales personnel; warranty services; and freight and delivery services. These selling activities can be generally grouped into three selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; and (3) warranty and technical support. Accordingly, based on the selling function categories, we find that LG performed sales and marketing, freight and delivery services, and warranty and technical support for U.S. sales, and that these functions were performed at the same or similar level of intensity in all three distribution channels in the U.S. market. Because the selling functions performed by LG in Korea do not differ significantly among channels, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, LG reported that it made sales through four channels of distribution (i.e., sales to construction companies, sales to unaffiliated retailers, sales to unaffiliated retailers for which LG was responsible for delivery and installation at the end-user's location, and sales made by its affiliated retailer, HiPlaza, to unaffiliated end-users).

LG reported that it performed the following selling functions for sales to all home market customers: sales forecasting, product development/market research, advertising, sales promotion, packing, inventory maintenance, order input, direct sales personnel/sales support, warranty services, payment of commissions, and freight and delivery services. In addition to these activities, LG reported that HiPlaza maintained an extensive retail presence in Korea during the POI, and performed the following additional selling functions for its sales to unaffiliated retail customers: sales forecasting, advertising, sales promotion, inventory maintenance, order input, direct sales personnel/sales support, and the payment of commissions.

These selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, we find that LG performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing at the same relative level of intensity for its three reported sales channels to unaffiliated customers in the home market. Thus, we consider these three channels to constitute one LOT. Regarding sales made by LG's affiliated retailer, we find that HiPlaza performed additional sales and marketing, and inventory maintenance functions for sales to its customers. These additional selling functions are sufficient to determine that HiPlaza's home market sales were at a more advanced LOT than those made by LG to unaffiliated customers. Accordingly, based on the totality of the facts and circumstances, we preliminarily determine that LG made sales at two LOTs in the home market.

Finally, we compared the U.S. LOT to the home market LOTs and found that the selling functions LG performed for its home market customers are more advanced than those performed for its U.S. customers. That is, there is a broader range of selling functions performed in the home market (at both home market LOTs) than in the U.S. market, and these functions are performed at a higher level of intensity than in the U.S. market. This difference is sufficient to determine that LG's U.S. LOT is different from the home market LOTs. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the home market during the POI were made at different LOTs than sales to the United States. Additionally, because LG's home market LOTs are at a more advanced stage of distribution than its U.S. LOT and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset pursuant to section 773(a)(7)(B) of the Act.

### Samsung

Samsung reported that it made CEP sales through two channels of distribution (i.e., direct sales to unaffiliated customers and CEP sales out of inventory). Samsung reported that it packed subject merchandise in Korea and provided freight and delivery services for sales to its CEP customers. Samsung also performed sales/marketing support and market research for its CEP sales. These selling activities can be generally grouped into two selling function categories for analysis: (1) sales and marketing and (2) freight and delivery services. Accordingly, based on the selling function categories, we find that Samsung performed freight and delivery and sales and marketing activities for U.S. sales. Because the selling functions performed by Samsung in Korea were the same in both channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Samsung reported that it made sales through two channels of distribution (i.e., sales to unaffiliated customers and sales to affiliated resellers). Samsung reported that it performed the following selling functions for sales to all home market customers: sales forecasting, strategic/economic planning, personnel training/exchange, provision of engineering services, advertising, sales promotion, distributor/dealer training, packing, inventory maintenance, order input/processing, employment of direct sales personnel, sales/marketing support, market research, technical assistance, provision of rebates and cash discounts, provision of warranty services, provision of guarantees, provision of after-sales services, and provision of freight and delivery services.

These selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, we find

that Samsung performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its home market sales. Because the selling functions Samsung performed were the same in both channels of distribution, we preliminarily determine that Samsung made sales at one LOT in the home market.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions Samsung performed for home market customers are more advanced than those performed for its U.S. customers. This difference is sufficient to determine that the U.S. LOT is different from the home market LOT. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the home market during the POI were made at a different LOT than sales to the United States. Additionally, because Samsung's home market LOT is at a more advanced stage of distribution than its U.S. LOT and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset pursuant to section 773(a)(7)(B) of the Act.

#### D. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that LG's and Samsung's sales of washers in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether LG's and Samsung's sales were made at prices below their respective COPs.

##### 1. The Petitioner's Allegation Regarding Input Suppliers

Section 771(33)(G) of the Act defines an affiliated party as any person who controls any other person and such other person. The Act further states that a person shall be

considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The SAA, at 838, provides that a company may be in a position to exercise restraint or direction through, among other factors, close supplier relationships in which the supplier or buyer becomes reliant on the other. The Department's regulations at 19 CFR 351.102(b) provide that control will not exist on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.

The petitioner alleged that LG and Samsung control certain of their respective input suppliers by virtue of a close supplier relationship and, therefore, are affiliated within the meaning of section 771(33)(G) of the Act. Specifically, the petitioner asserted that each of the suppliers in question is reliant on either LG or Samsung for a significant percentage of its total sales, and for certain forms of financial assistance. See the petitioner's April 20, June 6, June 11, June 15, and July 7, 2012, submissions. Accordingly, the petitioner requested that we obtain relevant sales and cost data for the top input suppliers of LG and Samsung in order to determine whether the prices between the respondents and their suppliers were at arm's length.

We issued supplemental questionnaires to LG and Samsung requesting additional information so that we could analyze whether the respondents were in a position to exert control over the suppliers at issue. See the Department's May 7 and June 18, 2012, questionnaires. LG submitted detailed supplier-specific information on May 25 and July 2, 2012, in response to the Department's requests. See LG's July 2, 2012, response at pages 6 – 8, and Exhibits A-50 through A-53 (Supplier 2011 Financial Statements), Exhibit A-54 (Data on LG Purchases and Supplier Total Sales), Exhibits A-55 through A-58 (2011 Supply Agreements), and Exhibit A-60 (Sample Loan Contract). Samsung submitted detailed

supplier-specific information on May 31 and June 27, 2012. See Samsung’s June 27, 2012, response at pages 1 – 5 and Exhibit 1 (Samsung’s purchases), Exhibit 2 (Unaffiliated Supplier Financial Statements), Exhibit 3 (Supply Agreements), Exhibits 4 – 6 (Direct Loan Details), and Exhibits 7 – 8 (Details of Loans provided under IBK Fund).

In light of the petitioner’s allegations, we reviewed the information provided by LG and Samsung and considered several factors in assessing whether there is evidence that the relationships between the respondents and their suppliers had the potential to impact pricing and production decisions. Among the factors we considered in our analysis were: 1) the terms and provisions of supply agreements between the respondents and their suppliers, 2) the relative percentage that sales to the respondents represented of each of the suppliers’ total sales, 3) the terms of any financing agreements with the suppliers, if any, and 4) the overall profitability of the input suppliers. For both LG and Samsung, among other things, we found that none of their top input suppliers sold exclusively to them. Based on our analysis of the record information, for LG, we determined that the evidence does not support a conclusion that the relationship between LG and its suppliers is sufficiently close to warrant a finding of control, pursuant to section 771(33)(G) of the Act. Likewise, for Samsung, we determined that the information on the record does not support a finding that the relationship between Samsung and its suppliers is sufficiently close to warrant a finding of control. Therefore, we preliminarily find that LG and Samsung and their respective top input suppliers are not affiliated under section 771(33)(G) of the Act. See memoranda entitled “Cost of Production and Constructed Value Calculation Adjustments for the for the Preliminary Determination – LG Electronics Inc. and LG Electronics USA, Inc.” (LG Cost Calculation Memo), and “Cost of

Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Samsung Electronics Corporation,” dated concurrently with this notice.

2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for G&A expenses, interest expenses, and home market packing costs. See “Test of Home Market Sales Prices” section below for treatment of home market selling expenses. Based on the review of record evidence, neither LG nor Samsung appeared to experience significant changes in the cost of manufacturing during the POI. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

We relied on the COP data submitted by LG and Samsung. For LG, we relied on the COP data submitted except that for LG we revised the G&A expense ratio to express all G&A expenses recorded on LG’s company-wide financial statements as a percentage of LG’s company-wide unconsolidated cost of goods sold. We also revised the research and development (R&D) component of the G&A calculation to include a portion of R&D expenses reflected on LG’s consolidated financial statements. See memorandum entitled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – LG Electronics Inc. and LG Electronics USA, Inc.” (LG Cost Calculation Memo), dated concurrently with this notice.

3. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of



any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

#### 4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of LG's and Samsung's home market sales during the POI were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of Normal Value Based on Comparison Market Prices

LG

We calculated NV based on delivered prices to unaffiliated customers. For those sales where the shipment date preceded the invoice date, we used the shipment date as the date of sale. We made deductions, where appropriate, from the starting price for discounts and rebates. We also made deductions for movement expenses, including inland freight, handling, and warehousing, under section 773(a)(6)(B)(ii) of the Act. Regarding inland freight, handling, and warehousing, LG paid an affiliated company to arrange unaffiliated subcontractors to perform these services. Because LG's affiliate did not provide the same service to unaffiliated parties, nor did LG use unaffiliated companies for these services, we were unable to test the arm's-length nature of the expenses paid by LG. Therefore, we based these expenses on the affiliate's costs. See the LG Calculation Memo for further discussion.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses, i.e., imputed credit, bank charges, direct advertising and promotional expenses, warranty expenses, and commissions.

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses, i.e., imputed credit, bank charges, direct advertising and promotional expenses, warranty expenses, and commissions. We made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

For comparisons to both EP and CEP sales, we reclassified certain expenses that were incurred by LG's affiliated retailer in maintaining its retail presence in the Korean market as indirect selling expenses because these expenses related to rent, sales staff salaries, and other overhead expenses and did not result from or bear a direct relationship to particular sales.<sup>35</sup> In addition, we disregarded the expense associated with credit card interest support that LG claimed as a direct selling expense because LG allocated this expense to all home market sales, rather than limiting the allocation to those sales incurring the expense, as requested by the Department. We also reclassified as indirect selling expenses the expenses LG reported as home market rebates pertaining to gift cards and loyalty points because LG did not demonstrate adequately that the reported amounts had been applied only to those sales which were purportedly eligible for these rebates. See the LG Calculation Memo.

For all price-to-price comparisons, where commissions were granted in the home market but not in the U.S. market, we made an upward adjustment to NV for the lesser of: (1) the amount of commission paid in the home market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the U.S. market. See 19 CFR 351.410(e).

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

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<sup>35</sup> See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea, 76 FR 67675, 67685 ( November 2, 2011); unchanged in Refrigerators.

Samsung

We calculated NV based on delivered prices to unaffiliated customers and/or prices to affiliated customers that we determined to be at arm's length. We increased the starting price by the amount of billing adjustments. We made deductions, where appropriate, from the starting price for discounts and rebates. We also made deductions for movement expenses, including inland freight and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act.

In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (i.e., imputed credit expenses, advertising expenses, and warranty expenses).

Regarding inland freight, warehousing, and warranty expenses, Samsung paid affiliated companies to perform these services in the home market. Because Samsung's affiliates did not provide the same service to unaffiliated parties, nor did Samsung use unaffiliated companies for these services, we were unable to test the arm's-length nature of the expenses paid by Samsung. Therefore, we based these expenses on the affiliates' costs. See the Samsung Calculation Memo for further discussion.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

### Verification

As provided in section 782(i) of the Act, we will verify information relied upon in making our final determination.

### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register.

Consistent with our practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit<sup>36</sup> equal to the amount by which the NV exceeds the EP or CEP, less the amount of the countervailing duty determined to constitute an export subsidy.<sup>37</sup> In this case, although the product under investigation is also subject to a concurrent countervailing duty investigation, with respect to LG and Samsung, the Department preliminarily found no countervailing duty attributable to export subsidies. Therefore, we have not offset the cash deposit rates shown below for LG or Samsung for purposes of this preliminary determination. However, with respect to Daewoo, the Department did find preliminarily countervailing duties attributable to export subsidies.

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<sup>36</sup> See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

<sup>37</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India, 69 FR 67306, 67307 (November 17, 2004).

Therefore, for Daewoo, we offset the AFA antidumping margin (i.e., 82.41 percent) by the countervailing duty rate attributable to export subsidies (i.e., 3.30 percent).<sup>38</sup> See Memorandum entitled “Preliminary Determination Margin Calculation for Daewoo Electronics Corporation,” dated concurrently with this notice.

We will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

<u>Exporter/Manufacturer</u>	<u>Weighted-Average Margin Percentage</u>
Daewoo Electronics Corporation	79.11
LG Electronics, Inc.	12.15
Samsung Electronics Co., Ltd.	9.62
All Others	11.36

The “All Others” rate is derived exclusive of all de minimis or zero margins and margins based entirely on AFA. We have based our calculation of the “All Others” rate on the weighted-average of the margins calculated for LG and Samsung using publicly-ranged data. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents.<sup>39</sup> For further discussion of this calculation, see memorandum entitled “Calculation of the All Others Rate for

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<sup>38</sup>See Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination, 77 FR 33181 (June 5, 2012).

<sup>39</sup> See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination, 76 FR 41203, 41205 (July 13, 2011).

the Preliminary Determination of the Antidumping Duty Investigation of Large Residential Washers from Korea,” dated concurrently with this notice.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Disclosure

The Department will disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. See 19 CFR 351.224(b).

#### Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. See 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Case briefs must present all arguments that continue to be relevant to the Department’s final determination, in the submitter’s view. See 19 CFR 351.309(c)(2). Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. See 19 CFR

351.310(c). If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to sections 733(f) and 777(i) of the Act and 19 CFR 351.205(c).

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Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_July 27, 2012\_\_  
(Date)